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**COUNSEL FOR ACIS CAPITAL MANAGEMENT, L.P.
 AND ACIS CAPITAL MANAGEMENT GP, LLC**

**IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE NORTHERN DISTRICT OF TEXAS
 DALLAS DIVISION**

In re:	§	Case No. 18-30264-SGJ-11
	§	Case No. 18-30265-SGJ-11
ACIS CAPITAL MANAGEMENT, L.P.,	§	
ACIS CAPITAL MANAGEMENT GP,	§	(Jointly Administered Under Case
LLC,	§	No. 18-30264-SGJ-11)
	§	
Debtors.	§	Chapter 11

ACIS CAPITAL MANAGEMENT, L.P.,	§	
ACIS CAPITAL MANAGEMENT GP,	§	
LLC, Reorganized Debtors,	§	
	§	Adversary No. 20-03060-SGJ
Plaintiffs,	§	
	§	
vs.	§	
	§	
JAMES DONDERO, FRANK	§	
WATERHOUSE, SCOTT ELLINGTON,	§	
HUNTER COVITZ, ISAAC LEVENTON,	§	
JEAN PAUL SEVILLA, THOMAS	§	
SURGENT, GRANT SCOTT, HEATHER	§	
BESTWICK, WILLIAM SCOTT, AND	§	
CLO HOLDCO, LTD.,	§	
	§	
Defendants.	§	

**ACIS' NOTICE OF INTENT TO OFFER MATERIALS FOR
JUDICIAL NOTICE DURING FEBRUARY 9, 2022 HEARING ON
DEFENDANT GRANT SCOTT'S MOTION TO DISMISS**

Acis Capital Management, L.P. and Acis Capital Management GP, LLC (together, "Acis") file this Notice of Intent to Offer Materials for Judicial Notice during the upcoming February 9, 2022 hearing on Defendant Grant Scott's Motion to Dismiss (Dkt. #21). In support, Acis would respectfully show the Court the following:

I. SUMMARY

During oral argument on Defendant Grant Scott's Motion to Dismiss, Acis may request the Court take judicial notice of one or more of the record items cited herein, which consist of this Court's prior findings in the Acis bankruptcy proceeding, No. 18-30264, as well as testimony from hearing transcripts from that proceeding.

II. DISCUSSION

A. The Court may take judicial notice of filings, orders, judgments, and hearing transcripts.

Among other things, courts may consider matters of which they may take judicial notice when considering a motion to dismiss for failure to state claim. *Lovelace v. Software Spectrum Inc.*, 78 F.3d 1015, 1017–18 (5th Cir. 1996). Such matters include the judicial record in prior related proceedings, *Reneker v. Offill*, No. CIV.A. 3:08-CV-1394-, 2010 WL 1541350, at *5 (N.D. Tex. Apr. 19, 2010), and matters of public record. *Crear v. JPMorgan Chase Bank, N.A.*, 491 F. Supp. 3d 207, 212 (N.D. Tex. 2020). Accordingly, it is proper for the Court to consider "filings, order, and judgments" from prior lawsuits, *Crear*, 491 F. Supp. 3d at 212, as well as hearing transcripts. *In re Black Elk Energy Offshore Operations, LLC*, No. 15-34287, 2021 WL 346226,

at *5 (Bankr. S.D. Tex. Feb. 1, 2021) (citing, as an example, *In re Jetstar Partners, Ltd.*, 2013 WL 365111, at *1 (Bankr. N.D. Tex. Jan. 29, 2013)).

B. The Court should take judicial notice of its prior findings from the Acis bankruptcy proceeding, as well as hearing transcripts from that proceeding.

Considering the above authority, the Court may and should take judicial notice of the following in determining whether to grant or deny Grant Scott's Motion to Dismiss:

- The Court's prior finding that the "ALF Share Transfer"¹ was rendered four days after Josh Terry received an almost \$8 million arbitration award against Acis. *See* Ex. A, "Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Contested Involuntary Bankruptcy Petitions," *In re Acis*, No. 18-30264, Dkt. # 118, at 17.
- Its prior finding that "[n]o credible business justification was offered for" the ALF Share Transfer. *See id.* at 18.
- Its prior finding that "[t]he document effectuating [the ALF Share Transfer] was signed by Frank Waterhouse, Treasurer for and on behalf of Acis LP, acting by its general partner, Acis GP/LLC." *Id.* at 19.
- James Dondero's prior hearing testimony that he has known Grant Scott "for a long time." *See* Ex. B, Hearing Transcript from March 23, 2018, *In re Acis*, No. 18-30264, Dkt. # 99, at 158:6-7.
- Mark Okada's prior hearing testimony that Grant Scott is a "friend [of] Highland" Capital² and that James Dondero and Grant Scott "go way back; twenty, thirty years." *Id.* at 23:25–24:1.
- Mark Okada's prior hearing testimony that CLO HoldCo has a "management contract with Highland [Capital] to manage its investments." *Id.* at 71:11–72:1.
- Mark Okada's prior hearing testimony that the capital that initially capitalized CLO HoldCo was "a donation from Highland." *Id.* at 72:9-11.

¹ This term is defined here as it is defined in Acis' Complaint, at ¶ 86.

² "Highland Capital" refers to Highland Capital Management, L.P.

III. CONCLUSION AND PRAYER

For these reasons, the Court should take judicial notice of the material cited herein in considering Grant Scott's Motion to Dismiss.

Respectfully submitted,

/s/ Joseph Y. Ahmad

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COUNSEL FOR ACIS

CERTIFICATE OF SERVICE

I certify that on February 8, 2022, notice of this document will be electronically mailed to the parties that are registered or otherwise entitled to receive electronic notices in this adversary proceeding pursuant to the Electronic Filing Procedures in this District.

/s/ Alex Hernandez

Alex Hernandez